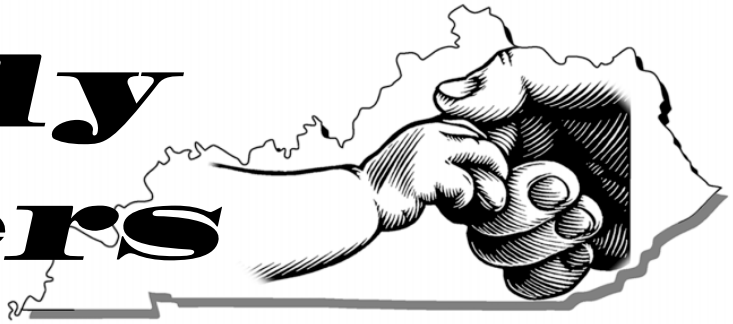
Family Matters



Quarterly News & Information About Family Court in Kentucky

July 1999

THIS ISSUE

EXCITING THINGS ARE HAPPENING!!

GROWING AND GROWING.....

Sizzling Summer!

It will be another exciting summer for family courts in the Commonwealth as we look forward to expansion in Floyd County in July, and then round off the summer with five new family court projects beginning in September. Plans are being made for family court in McCracken; Franklin; Madison and Clark; Lincoln, Rockcastle and Pulaski; and Christian Counties. Our department is busily planning a comprehensive orientation training for the new court sites, to be held October 6- 8. Jefferson Family Court has graciously agreed to host this event, and our three newest courts, Boone/ Gallatin, Warren and Pike will share their start-up experiences to assist new courts in their growth. Thank you!

I want to thank all the contributors to the newsletter for their submissions, and welcome the Jefferson Family Court as an additional contributor. We've had a number of suggestions for future articles and submissions, and requests for copies. This newsletter continues our past structure, with site updates, and then several submissions of articles. With our distribution growing and the important information being disseminated, I think it's time we form an editorial board to provide direction and policy on future submissions; we were fortunate this time to receive more submissions than we could print — without killing too many trees!

One goal of this department is to provide the newsletter online - through the development of a Kentucky Family Court website. Stay tuned as we move in this direction.

As always, we welcome your questions and suggestions. Stay out of the sun, keep cool, and have a wonderful summertime.

Carla Kreitman
Family Court Coordinator

BOONE/GALLATIN FAMILY COURT.....

Kimberely J. Adams

The transition of cases from Circuit and District Court to the Boone/Gallatin Family Court is now complete and the dockets have been running smoothly. Between October 14, 1998 and March 31, 1999 Judge Linda Rae Bramlage heard 12 adoptions;
1015 domestic/dissolution matters; 284 domestic violence matters; 351 juvenile matters; 378 paternity cases and two cases involving termination of parental rights. These figures reflect the number of times a case has come before the court; not just new case filings.

Minor adjustments have been made in scheduling domestic actions in Boone and Gallatin Counties. Judge Bramlage's Boone County juvenile docket has proven to be the most challenging. During the first few months of the year Judge Bramlage and Family Court Administrator Kim Adams conducted a review of the juvenile courtroom procedure to determine what changes would allow the docket to proceed more smoothly. As a result of that review, a few procedural adjustments have been made. Community service agencies involved in juvenile matters, such as Boone County Human Services, Court Appointed Special Advocate, and the Department of Community Based Services, are forwarding all necessary reports to Judge Bramlage one day prior to hearings.

Also, the family court support worker is taking a more active role in the progress of the juvenile docket. Mr. Penrose now works with Judge Bramlage, the county attorney's office, the guardians ad litem, and community service agencies in calling the cases to be brought before the court. He also keeps people waiting for their cases to be called apprised of the docket's progress, to help alleviate the frustration of expectantly waiting.

The Boone/Gallatin Family Court Advisory Council has determined bimonthly meetings will be sufficient to meet the needs of the court. The meeting dates for the remainder of 1999 are as follows: August 12, 1999; October 14, 1999; and December 9,1999. Carla Kreitman, Kentucky Family Court Coordinator, met with the Advisory Council at its March meeting and discussed the benefit of strategic planning in order to determine a future course for the court. There was general agreement among council members that the entire council should be involved in project planning. A date for an extended project planning meeting will be scheduled within the next few months. The subcommittee continues drafting local rules and procedure to be presented to the Advisory Council. The **Families in Transition** (FIT) divorce education program is running smoothly with sessions filling up quickly. In some instances, Judge Bramlage will order parties to attend the FIT program even though their divorce actions were filed prior to January 1, 1999, if she determines that the parties will benefit from the program. The surveys of litigants who have attended the programs have been very positive. Participants generally believe the program helps them and their children deal better with the trauma of divorce. (*See article on F.I.T. Program in Jefferson County, page 5*.)

A **Youth Collaborative** has been formed to address truancy issues in Boone County. Along with members of the Family Court and Human Services, membership includes representatives from the Department of Community Based Services, Court Designated Workers, Department of Juvenile Justice, The Children's Law Center, Boone County Sheriff's Department, attorneys involved in children's issues, Boone County school representatives, (Superintendent, Director of Pupil Personnel, all principals and assistant principals of the middle schools and high schools) and the Superintendent, Assistant Superintendent, principal and assistant principal of the Walton-Verona school system. To date, there have been three meetings of the Youth Collaborative which have proven very productive in opening the lines of communication among the various entities involved. Meetings will be held on a monthly basis. A subcommittee is meeting to develop a communication protocol among the entities involved and different models for addressing issues to present to the full group. It is anticipated that the collaborative will reach a consensus as to which model to use, and then work toward refining that model over the summer so that it can be implemented with the beginning of the 1999-2000 school year.

PIKE FAMILY COURT.....

Glenda Lyons

On March 30, 1999, Judge Kathryn Burke attended a meeting hosted by the Governor's Office and the Commission on Women in Frankfort. The meeting addressed Kentucky's Criminal Justice System and enhanced leadership opportunities that women have across the Commonwealth. The meeting provided Judge Burke an opportunity to give direct input on how to interest more women in becoming judges and how to aid them in reaching that goal.

Karen Gibson, County Judge Executive, signed a proclamation on May 3, 1999 proclaiming the month of May as **Juvenile Court Month** in celebration of the centennial of Juvenile Courts in the United States.

On May 17, 1999, Pike Family Court had their dedication/open house for the Children's Waiting Area. First Lady Judi Patton and Chera-Lyn Cook, Miss Kentucky, were the guest speakers. The volunteers were recognized for all their hard work and enthusiasm that made the Children's Waiting Area a reality. This was one of Judge Burke's top priorities as Family Court Judge. Tours were given for the Children's Waiting Area and The Family Court Courtroom, in conjunction with the centennial celebration of Juvenile Court.

The number of Family Court cases heard in the last quarter of 1998 includes 102 dependencies, 93 dissolutions, 171 paternities, 58 status offenses, 4 delinquencies and 237 domestic violence orders. The following is raw data for the first quarter of 1999: 5 adoptions 152 dependencies, 327 dissolutions, 5 terminations, 172 paternities, 92 status offenses, 2 delinquency and 283 domestic violence orders.

WARREN FAMILY COURT.....

Connie DeVries & Maggie Pearson

The Warren Family Court has seen a steady increase in the number of cases going before Judge Margaret Ryan Huddleston since she took the bench in late October, 1998. To date, Judge Huddleston has heard a total of 1,731 cases. Domestic violence and juvenile status offenders make up the majority of the total cases heard with 567 and 561 cases respectively. Divorce cases total 343, child support accounts for 159 cases, paternity with 83 cases and adoptions and terminations with 17 cases. In March and April alone, 141 new divorce cases were filed, 82 domestic violence and 111 juvenile cases.

On May 5, 1999, Judge Huddleston began a **Truancy Diversionary Project** at both the junior high and elementary school levels. The sessions were held at separate schools before the beginning of classes at 7:15 a.m. Each session lasted approximately 1 hour with 6 families participating at each school. These children and their parents were referred to the program by the principals of the schools. They will have an opportunity to attend two sessions before school recesses for the summer. Treatment plans were developed for each family to work on for the remainder of the school year and into next fall. These children will be followed closely as school resumes next year to evaluate the effectiveness of the program. The initial feedback from all participants has been positive.

Warren Family Court is continually exploring new projects to provide ways to benefit children and families in crisis. Judge Huddleston is working with **Court Appointed Special Advocates** (CASA) to provide help for children in the court system. Currently, Family Court has applied for a grant and is working on another to provide trained staff members to oversee supervised visitation when it has been ordered by the court between children and their families. We hope to utilize the children's waiting area specifically designed for Family Court in the Warren County Justice Center when it is ready for occupancy in mid July. Commitments have been made from the community to furnish toys and games for this area.

The months of March and April have been eventful for the Warren Family Court. On February 27, 1999, they donned their bowling shoes and hit the bowling lanes to participate in the annual "Bowling for Kids Sake" sponsored by **Big Brothers and Sisters.** The Family Court team might not have been the top bowlers, but they had a great time representing a worthwhile cause. Judge Huddleston came out as the top bowler in the group!

On March 10, 1999, an advanced class from Bowling Green Senior High School occupied the Family Courtroom to hold a "mock trial." Judge Huddleston provided her courtroom and advised students on normal courtroom procedure. The Bowling Green Jr. High School participated in a "mock trial" in May, involving 90 students and then went for a tour of the Warren County Regional Jail and Juvenile Detention Facility.

On March 30, 1999, the **Women of Achievement Awards** was held at the Greenwood Executive Inn. We are proud to announce that Judge Huddleston had the honor of receiving the ***"Women's First"*** Award. She

was also nominated for the ***"Women of Distinction"*** Award. Judge Huddleston was selected from a field of several outstanding women in the community. The Women of Achievement Award is sponsored by the Bowling Green Human Rights Commission. Also, on March 30th Judge Huddleston attended the Women's Judge's Project and reception given by Governor Patton and his wife.

On April 13, 1999, the **Lawyers Care** sponsored training entitled **Practice and Procedures in Family Court : An Overview.** Speakers for this event included Hon. Claudia Grenough, Just Solutions, Louisville, KY.; Judge Margaret Huddleston, Warren Family Court; Hon. Carla Kreitman, State Family Court Coordinator; Hon. Joy Denton; Hon. David Lanphear and Hon. Terrill Miller of the Bowling Green Bar Association. In addition to an instructional presentation, the session included a panel discussion and a question and answer session regarding the practice of law in Family Court.

On April 20, 1999, The Child Support Enforcement Commission sponsored a public forum on child support issues. This forum allowed the public to suggest improvements for the child support system.

On April 22, 1999, Judge Huddleston participated in the **"Kids on the Block"** Adoption Ceremony. This event was the highlight of the month with its entertaining puppets and the "feel good" atmosphere that this entire project evokes.

JEFFERSON FAMILY COURT.....

A BIG MOVE!

The Jefferson Family and Circuit Courts have relocated to the new 10- story Jefferson County Judicial Center at 700 West Jefferson Street. The move to the center occurred during the first week of February and was a major undertaking that involved the coordinated efforts of many court, public and construction officials. Future occupants will include offices for the Kentucky Supreme Court and Kentucky Court of Appeals. Jefferson District Court remains in the Hall of Justice, which is currently being renovated.

SOME NUMBER CRUNCHING .....
Jefferson Family Court Revised Fiscal Year
July 1997- June 1998
Case Openings and Closings

	Open	Closed
Divorce	5,155	5,293
EPO	4,704	4,637
Paternity	3,264	2,794
Status	1,128	553
Neglect	1,107	599
Child Abuse	1,084	596
Adoptions	269	265
Dependency	241	333
URESA	234	232
TPR	150	142
Delinquency	90	61
TOTALS	17,426	15,505

EPO Emergency Protective Order
TPR Termination of Parental Rights

IN THE SPOTLIGHT.....

The National Council of Family and Juvenile Court Judges Permanency Planning for Children Project has published the Diversion Project Matrix Report. The report examines the court's role in diverting families from traditional child welfare services into community programs.

The following four courts have collaborated since March 1995 in this developmental process:

Hamilton County Juvenile Court
Cincinnati, Ohio
Hawaii Family Court
Honolulu, Hawaii
Jefferson Family Court
Louisville, Kentucky
Superior Court of California
Santa Clara County

As a result of the project, the Jefferson County Family Court, the Cabinet for Families and Children, the County Attorney's Office, Just Solutions and the partner agencies of the Community Partnership for

Protecting Children have developed a Family Mediation Program and a Family Group Decision Making Program for dependency, neglect and abuse cases. Both of the programs are designed to provide families with opportunities to develop plans to address the concerns which have led to the abuse or neglect. For further information, contact Jim Birmingham, Jefferson Family Court Administrator at (502) 595-4392.

Chief Family Court Judge Richard FitzGerald was honored by the Louisville Bar Association as 1998 Judge of the Year at the Annual Bench and Bar Dinner. He was honored for his innovative leadership of Kentucky's first family court site, which has become a model for other court systems around the country. More than 350 attorneys and guests were in attendance.

Presentation Academy, in partnership with Spaulding University, presented Judge Joan Byer with a 1998 Tower Award. This annual recognition was created to recognize and celebrate the accomplishments of women in the Kentuckiana area who can be identified as role models for students. Additionally, Judge Byer received the 1998 Outstanding Member Award from the Women Lawyer's Association of Jefferson County. The award recognized her outstanding contributions to the organization, the community, and the legal profession.

Family Support Center Opens

Jefferson Family Court and the University of Louisville's Kent School of Social Work announce the opening of the **Family Support Center** at 2209 South Floyd Street. The collaborative effort is the result of more than three years of work aimed at providing the community a safe and nurturing place for children to build relationships with family members or to allow exchanges of children between family members without conflict.

A task force of community agencies, attorneys, and concerned citizens began meeting in October of 1996 to discuss the need for a center that would promote children's relations with their families. As a result of those discussions, Jefferson Family Court was able to secure a grant from the Cabinet for Families & Children, Child Support Division, to develop the center. The Louisville Bar Association is serving as fiscal agent for the grant. Jefferson Family Court contracted with the Kent School to provide services. Master level students from the school work at the Family Support Center. Families referred to the center are asked to participate in screening and assessments to determine the best avenue for children to access time with their families. The center's services can be accessed voluntarily or by court order, and services are available on a sliding scale basis. The hours of operation are Wednesdays and Fridays from 9 a.m. until 7 p.m. and Sundays from noon until 7 p.m. Other times can be arranged if needed.

The Family Support Center has been providing supervised visitation and/or supervised exchange programs since August of 1998. Currently there are over 75 families receiving services. Courts from Georgia, Missouri, and Virginia have requested developmental information for establishing similar centers in their communities.

Questions about the Family Support Center should be directed to Mary Lou Cambron at (502) 595-4787. Referrals can be made by calling the same number.

"Families In Transition" Program

"Families in Transition" (F.I.T.) is a divorce education program developed by the Jefferson Family Court and the Family Therapy Program at the University of Louisville. The F.I.T. program helps families recognize in a positive manner the difficulties experienced by children in divorce. The program also helps parents deal with their own divorce issues. In addition, parents receive information on co-parenting.

The F.I.T. program was implemented in Jefferson County in 1992. In Jefferson County, families filing for divorce with children ages 8 through 16 are required to attend the 6 hour F.I.T. program. The program is offered throughout the community at various times and locations. To date, more than 3,112 families (6,224 adults and 5,252 children) have been ordered to attend.

Since its creation, the Jefferson County F.I.T. Program has been cited in the Wall Street Journal and has been identified by the Family and Conciliation Courts Review as one of the top 3 programs in the country to offer a comprehensive divorce education program. Due to the positive impact of the program on families and children, the program has expanded to other family courts in the Commonwealth.

From August to October 1997, the participants evaluated the F.I.T. program in Jefferson County. Some

participants felt that the program should not be mandatory while others felt that the program should have longer sessions or follow-up sessions. Participants also provided their opinion in a questionnaire. Participants found the discussion on:

How to deal with divorce-related problems with my children:

Very Helpful	52%	(110 responses)
Somewhat Helpful	46%	(96 responses)
Not Helpful	2%	(4 responses)

How to develop a better relationship with my children:

Very Helpful	49%	(103 responses)
Somewhat Helpful	45%	(75 responses)
Not Helpful	6%	(14 responses)

How to reduce children's feelings of isolation and misconception about divorce:

Very Helpful	48%	(101 responses)
Somewhat Helpful	48%	(102 responses)
Not Helpful	4%	(9 responses)

How to deal with children's anger and resentment:

Very Helpful	44%	(93 responses)
Somewhat Helpful	50%	(106 responses)
Not Helpful	6%	(12 responses)

How my children are able to cope with divorce-related problems:

Very Helpful	44%	(93 responses)
Somewhat Helpful	53%	(111 responses)
Not Helpful	1%	(3 responses)

How divorce affects my children:

Very Helpful	55%	(115 responses)
Somewhat Helpful	44%	(93 responses)
Not Helpful	1%	(3 responses)

For more information on Jefferson County's F.I.T. Program please call (502) 595-3639.

Comments from program participants in the Boone/ Gallatin F.I.T. Program:

"…The sessions were very useful in educating the divorcing parents and children;" "...this has been a beneficial program for myself and my child;" "... this was a great experience, it helped a lot to deal with my child's anger;" "...it was extremely helpful in letting me know what to expect and how to approach different situations," "...I recommend the program to all families involved in divorce;""...this will help me answer my daughter's questions when she is old enough to ask;""...neither I nor my kids wanted to go to this, but we all enjoyed it;" "...the class helped me learn how to better deal with the children's feelings through the divorce and how to handle myself...this is a great program."

"Turning It Around"

Turning It Around (T.I.A.) is a collaborative effort in conjunction with the Home Incarceration Program (H.I.P.)."Turning It Around" was initiated by former Family Court Judge Henry Weber and is coordinated by the Department of Corrections; Dr. Joe Brown of the University of Louisville; Honorable Paula Bierley of the Jefferson County Attorney's Office; and Kevin Pangburn of River City Corrections. The purpose of the program is to improve the collection of child support payments, to reduce recidivism in contempt cases, and to encourage cooperative parenting.

Most participants are referred from Family Court as a diversion from being held in contempt. For those facing sentencing, T.I.A. may be offered as part of a plea agreement. The program is also offered to men who have been sentenced to attend the T.I.A. program to aid in their eligibility for H.I.P.

Compliance with the program requires weekly child support payments. The payment compliance is closely monitored by the program. Another element of compliance with T.I.A. is a 12 week class. This class covers topics such as responsibility, co-parenting, and personal financial management. The participants are also offered job training and placement services.

Sentenced individuals who successfully complete the program are recommended for shock probation, while those facing sentencing can avoid incarceration by

completing T.I.A.

Since its inception in 1995, over 400 men have been referred to T.I.A. Recently, the Jefferson County Attorney's Office has reviewed the cases. They found that 61% of the participants who were referred to T.I.A graduated from the program. 74% of the participants who graduated from the program and were granted shock probation are in compliance with paying their child support as compared to 62% compliance by non-T.I.A. participants.

T.I.A. is funded by a $45 per participant fee which is paid by the participants themselves. The fees primarily cover the expense of program materials and the cost of facilitators.

T.I.A. currently meets every Monday (excluding holidays) in space provided by Walnut Street Baptist Church. For more information on "Turning It Around" contact Patrick Mudd, Family Court Support Worker, at (502)595-2326 or Chuck Treibly at (502) 574-2234.

A Dream Come True From Our Children

The following article is a submission from one of the children who appeared in Family Court.

It was 6:00 when I got up that morning. I was so nervous that I didn't sleep very well the night before. I didn't have to get up until 7:30, but I wanted to make sure that I was ready. After all, it was going to be my first time meeting my biological father.

Slowly 7:00 rolled around, and my mother soon awakened from the noise of me getting dressed. She asked me why I was up so early. I told her that I was nervous and couldn't sleep. While I waited for my mother to get dressed, I noticed that my hands and feet began to sweat. Just sitting there thinking of all the things that could happen made me a nervous wreck. Also, I had never been to a courthouse in my entire life so meeting my father at one made me even more nervous than before.

As we were driving down all of the busy downtown streets, I saw many people. When we reached the courthouse, I saw a lot of people coming in, and a lot of people going out. I had even made a game for myself. I was to look at every black man that I saw and try to decide whether or not he was my father. But none of them fit my description. I began to think of the circumstances in which I was going to the courthouse. I had wished that it wasn't for child support.

When we walked in the courthouse, and through the alarm system, I saw many different types of people. Wow! I thought. We entered the family courtroom and took our seats. My mother whispered in my ear that the man standing against the wall looked like my father. When I glanced over there, it was amazing. He really did! We had the same color eyes and the same nose. I had all of his facial features.

At the moment my mother said that, joy began to fill my heart. I couldn't believe that after all of these years my father was standing in the same room as me. But then I began to get scared.

What if he rejected me? What if he didn't like me? All of these questions came to my head. I was really scared.

My mother realized that I was kind of shaken up so she convinced me that everything would be all right, so I approached him. He said hello, and I began to cry very hard. He asked me why I was crying, and I said because I have been waiting my whole life for this day, and I am so happy.

Pike Family Court Hosts IDEA Seminar

The Pike Family Court, in conjunction with the Kentucky Department of Public Advocacy, hosted a seminar entitled "The School District's Responsibility Under The Individuals With Disabilities Act" on Tuesday, March 2, 1999. The **Individuals With Disabilities Education Act** (IDEA) is a complicated piece of federal legislation which attempts to protect the ability of disabled students to receive an equal education in public schools.

IDEA requires schools that receive federal funding to carefully analyze the causes of a student's misbehavior prior to filing Beyond School Control charges [KRS 630.020(2)] in district court. Only those students whose behavior is determined to be unrelated to any learning disability can be charged with being Beyond School Control.

The seminar provided a framework for area lawyers and educators to help them better understand behavioral analysis. The participants in this event came

from Pike and Floyd counties. Among the approximately 75 in attendance were teachers, school board members, prosecutors, public defenders, private attorneys, and district court judges. Speakers included Pike Family Court Judge Kathryn Burke and Bill Morrison and Tim Shull, both of whom work for the Kentucky Department of Public Advocacy, Division of Protection and Advocacy.

For more information contact: John Austin, Law Clerk, Pike Family Court, at (606) 433-7062.

A Message from the Kentucky Court Improvement Project

John Burgess
Court Improvement Project

The Kentucky Court Improvement Project (K-CIP) is a federally funded initiative with a fiscal operating budget of $167,519, three full-time employees, and a rotating base of AOC in-kind contributions equaling 25% of its federal allotment. It has been in place in Kentucky since 1994. The overall mission of the K-CIP is to expedite the movement of abused, neglected, or dependent children who are ordered to enter foster care by the court system into safe and permanent homes.

The K-CIP recognizes that circuit clerks play a tremendous role in expediting judicial proceedings involving abuse, neglect, and dependency cases, as with all cases. Although often overlooked, clerks are truly one of the most important foundations on which judges stand to make their findings and orders.

Joe Santamore, Family Court Specialist, and I have been traveling to family court sites to attempt to identify some of the many challenges clerks face when handling abuse, neglect, and dependency cases. While visiting clerk's offices in current and future family court sites, we listened to the concerns and suggestions clerks and deputy clerks had regarding their abuse, neglect, and dependency case load. After listening to their concerns, it was concluded clerks were most frustrated with information duplication on AOC forms and the enormous amount of paper and forms they are required to process in general.

The Administrative Office of the Courts is attempting to consolidate abuse, neglect, and dependency forms. The purpose of AOC forms is to actualize these findings onto paper and ultimately transfer them into the electronic record system. So far, it has been very difficult to consolidate these forms while at the same time complying with the statutory requirements of KRS Chapter 620.

A preliminary draft consolidating seven forms into one has been compiled. This may eventually replace the temporary removal order, temporary custody order, disposition, permanency review disposition (new form), order of discharge from CFC commitment, and emergency custody order. Under this method, no other forms or paper would be necessary at an abuse, neglect, or dependency proceeding. The goal was to create a single form to be used in all abuse, neglect, or dependency proceedings.

Circuit Clerks play a vital role in abuse, neglect, and dependency proceedings. They bear a tremendous amount of responsibility and work very diligently to ensure files are in order and all necessary paperwork is present at hearings. Without clerks, process flows within the courtroom would be stalled and judicial delays would follow; both of which may prevent a child from attaining a safe and permanent home. It is the hope of the K-CIP that by reducing the number of forms used from petition to permanency, process flows within the clerk's office and the courtroom will improve. Clerks will also experience less frustration in their daily duties.

Thank you in advance for your support of the Kentucky Court Improvement Project. We hope our efforts assist you and all those involved with Kentucky's Family Courts. If you have suggestions or concerns please contact John Burgess, K-CIP, (800) 928-2350.

Questions to Ask When Developing Programs

Jennifer VanHoose

Family Court is more than a court. It is a court specifically focused on families and is both a link to a substantial provider of social services. One goal of family court is to provide delivery of both legal and social services. The premise behind this philosophy is to avoid continuing and costly litigation among families.

A commonly held misconception is that Family Court is responsible for providing direct services to children and families. This is not necessarily the case. Most often the Family Court will not directly provide the services but will refer families to existing appropriate

public agencies and private professionals.

In providing social services, "it is important for family courts to maximize community services, input and public relations. The delivery of social services is best provided by community programs. Since many of the families are not highly motivated to become involved in social service programs, the best way of insuring that they are going to attend is by providing them programs within their own community."[1]

The list of program possibilities for Family Court is long. Programs such as mediation, divorce education, parenting education, status or truancy programs, and support groups, represent just a few of the many successful family court programs currently being utilized.

What if your community does not have existing programs? How do you implement a new social service program for the families in your community? This article addresses some of the many questions to be asked and answered before developing and implementing a court program.

The first order of business in implementing a new program is to "secure a broad base of community support. Involving the community prior to planning and implementation builds ownership, provides access to expertise, increases access to outside resources, and increases the public relations potential of program activities."[2] Include as many members of the community in the planning of the program as possible such as local bar members, social workers, Court Designated Workers, community leaders, Cabinet For Families and Children representatives, and school officials.

Together the community should decide what program will meet the needs of the community. Once this decision is made, the real work begins. First, the planning committee must determine the purpose, mission, and outcome of the proposed program. This will guide the planning and evaluation of the program.

"Then identify those tasks that must be done if the goals are to be reached; this drives implementation. For each critical task identified, plans must be developed that establish time lines and identify reasons and the name of persons responsible for implementation."[3]

Included in the goals and mission of the proposed program is the population to be served by this particular program. Who will be invited or required to attend?

You must be realistic about your resources. For example, it would be wonderful to have a divorce education program that involved both parents and their children, but do you have the resources to accommodate everyone's needs? Often a program will begin small and grow as the resources that support it grow.

Therefore, funding is an integral issue in program development. Where will the money come from? Are grants available? Is there money in the community to support such a program? Money will be necessary for the start-up of the program to cover initial materials, staff, facilities, etc. Some programs charge clients for services in order meet the financial needs of the program. This is often achieved on a sliding scale in an effort to be sensitive to limited financial resources of many clients.

After the mission of the program has been identified, funding sources secured, and a program outlined, promotion and advertisement of the program should be considered. Attorneys, clerks, and the public must be notified of the programs existence, mission, clients that will be served, fees and rules. Will this be done through brochures, newsletters, public meetings and awareness sessions? This must also be considered when answering questions regarding budgeting and funds. When all the preliminary work has been achieved and the program is ready to accept participants, several questions must be answered regarding program participation. How will clients be referred to the program? An effective form of client referral is court order. If court order is the method used "attorneys play a crucial role in this process because they inform their clients about the requirements of the program."[4] Do specific court forms need to be developed for the purpose of ordering a client to a program?

What information will clients receive once they are accepted or ordered into the program? The logistics must be addressed. The client will need to know the basics such as time, location, length of class, and parking. The client will also need to be informed about a contact person and if he/she must

[1]Honorable Judge Robert Page. "Family Courts: A Model for an Effective Judicial Approach to the Resolution of Family Disputes." ABA Summit on Unified Family Courts: Exploring Solutions for Families and Children in Crisis." May, 1998. pp. A1 - A67.

[2] Bruce Bonar; et al. "Law Related Education Resource Guide." Kentucky Bar Foundation.

[3]Id

make a reservation in order to attend.

Once the client arrives for the program, what materials will they be given or required to have? Again, this is another consideration when developing your budget. Many programs require workbooks, pamphlets, or other materials in order to be properly implemented.

Another important aspect of program development and implementation is evaluation. Evaluation is often overlooked but is extremely important. How will you know the program is working? "A program evaluation should be completed by each participant to determine what information was learned and whether or not the program meets its goals and objectives."[5] Evaluations should be developed locally in order to assess local needs, successes and shortcomings of your particular program. Evaluation is an essential component when seeking additional or continuing community and financial support.

These are just a few considerations to be taken into account when developing a program. If you have further questions or concerns dealing with program implementation; please call the Department of Family Courts, Administrative Office of the Courts for more information.

UPCOMING ARTICLES

STRATEGIC PLANNING EVALUATION

GUARDIAN AD LITEM PRACTICES IN FAMILY COURT

WHAT IS MEDIATION ?

LOGO CONTEST

The Department of Family Courts is searching for a logo that embodies the philosophy of family courts in Kentucky. For more information, please contact Joana (Joe) Santamore, Family Court Specialist, at (502) 573-2350 or joanas@mail.aoc.state.ky.us

[4]Cambron, Lucas, Zimmerman. Divorce Education: *Pointing Families in the Right Direction.* 1997. (p. 10)

[5]Id.

Social Security Supplemental Security Income (SSI) Benefits and Child Support Obligations

J. Anthony Lovensheimer
Staff Attorney, Boone/Gallatin Family Court

Family Courts are often faced with difficult questions regarding Social Security benefits and how they effect the calculation of child support obligations. This article deals with Supplemental Security Income (SSI) benefits and how they are to be treated by courts when calculating child support obligations. The Kentucky Supreme Court has recently rendered a key decision impacting the issue. Because the Supreme Court intentionally avoided answering questions regarding the practical impact on enforcement of the current Kentucky statutes, the issue of SSI benefits and child support obligations is still unsettled.

The Kentucky Supreme Court addressed the issue for the first time in the recent decision of ***Commonwealth, ex rel. Morris v. Morris***, 984 S.W.2d 840 (Ky. 1998). The Court held that KRS 403.212(2)(b), which allows a court to include (SSI) benefits in the calculation for determining the amount of child support payments, does not conflict with the federal anti-attachment statute relating to SSI benefits, 42 U.S.C. § 407(a). The Court reasoned that although SSI benefits were to be included in the calculation for purposes of determining the amount of child support payments, nothing in the statute subjected SSI benefits to execution, levy, attachment, garnishment, or any similar involuntary transfer. Social Security Act, § 207(a), as amended, 42 U.S.C.A. § 407(a).

The only issue the Court addressed was the narrow Supremacy Clause issue. Under the Supremacy Clause of the United States Constitution, if KRS 403.212(2)(b) conflicts with the federal SSI provision, then the state statute must yield to the federal. After a very technical reading of the statutes in question, the Supreme Court found that there was no conflict between the two. U.S. CONST. Art. VI, § 2. In order to better understand this decision, the statutes themselves must be examined.

The Court first examined the federal statutes to establish the SSI framework. The SSI program provides benefits to those who are blind, disabled, or 65 or older, and who are otherwise eligible based upon lack of income and resources. 42 U.S.C. § 1381. The SSI program is subject to the "inalienability provision," 42 U.S.C. § 407(a) which states:

> (a) The right of any persons to any future payment under this subchapter shall not be transferable or assign able, at law or in equity, and none of the monies paid or payable or the rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or ***other legal process***, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. 407(a) (emphasis added). The key to the Court's analysis lies in 42 U.S.C. § 659 where "legal process" is defined as:

> ... any writ, order, summons, or other similar process in the nature of garnishment, which,
>
> (1) is issued by (A) a court of competent jurisdiction within any State, territory, or possession of the United States ... and (2) is directed to, and the purpose of which is to compel, a government entity, which holds moneys which are otherwise payable to an individual, to make payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support or make alimony payments.

The Court concluded that, based upon its reading of the foregoing federal statutes, the inalienability provision was limited to execution, levy, attachment, garnishment or other legal process in the nature of a garnishment order directed towards a governmental entity. ***Morris***, 984 S.W.2d at 841.

The statute covering determination of parental income for child support purposes, KRS 403.212, was amended

in 1994 to specifically require consideration of SSI benefits in making a determination of parental income. It now explicitly states:

(2) For the purposes of the child support guidelines:

(b) "Gross income" includes income from any source, except as excluded in this subsection, and includes but is not limited to income from salaries, wages, retirement and pension funds, com missions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, ***Supplemental Security Income (SSI)***, gifts, prizes, and alimony or maintenance received.

KRS 403.212(2)(b) (emphasis added). Based upon the text of this statute, the Court concluded, "nothing in KRS 403.212(2)(b) subjects SSI benefits to execution, levy, attachment, garnishment, or any similar involuntary transfer." ***Id.*** at 842 Therefore, it concluded that KRS 413.212(2)(b) does not conflict with 42 U.S.C. § 407(a).

However, despite the clarity with which the Court disposed of the Supremacy Clause issue, a far more difficult question remains: Can a child support order be enforced without directly violating the federal inalienability statute?

The Court is very careful to emphasize that it is only addressing the narrow Supremacy Clause issue and not dealing with any potential issues which might be raised if an order for child support were to be enforced. The Court concluded that, "we have nothing more than the bare legal question of whether the state statute conflicts with the federal statute, and we have held that it does not." ***Id.***

Former Justice Robert R. Stephens addresses the problems inherent in the court's technical, narrow interpretation of the issue in his dissent. First, he establishes that the "clear and unambiguous intent" of Congress when it established the SSI program and the relevant statutes was to protect SSI disability payments from involuntary transfer. ***Id.*** KRS 403.212(2)(b) frustrates this federal purpose in effect even if not on it's face. For as Justice Stephens points out, "When a court makes an award and the only possible means by which a party can pay that award is by using SSI disability benefit payments, then the result is the same as if these payments have been garnished or attached."

The future of enforcement can perhaps be seen in a case from Tennessee discussed by Justice Stephens in his dissent. In ***Tennessee Dept. Of Human Services ex rel. Young v. Young,*** 802 S.W.2d 594 (Tenn. 1990), the court held that a non-custodial parent's SSI disability benefits were not subject to garnishment by the state to partially reimburse the state for the public assistance monies which had been paid to the custodial parent. ***Id.*** at 600. In this case, the court was attempting to enforce its order, not by garnishment, but by a contempt order. That did not matter as the Tennessee court focused on the end effect on the individual receiving the SSI benefits. To those individuals who receive SSI benefits in order to keep them at a subsistence level below the poverty line, the means do not make a difference when the end result is the removal of the benefits intended by Congress to maintain the individual at a minimal level of existence. ***Id.*** at 589-99. ***See also Becker County Human Services v. Peppel,*** 493 N.W.2d 573, 575 (Minn. App. 1992)(holding that the threat to hold a child support obligor in contempt runs afoul of the protections offered by 42 U.S.C. § 407(a)).

In conclusion, the result of the Kentucky Supreme Court's decision in ***Morris*** is that this issue remains unsettled. As for those of us who are a part of the judicial system, all we can really take from the decision is that SSI benefits shall be considered in establishing child support obligations. However, because of the Court's narrow ruling, that is all we can take from it. The question of enforcement of an order for child support based on SSI benefits has yet to be addressed in Kentucky and until then, we will have to seek guidance from beyond our borders, such as Tennessee and Minnesota where SSI benefits are not included.

DOMESTIC VIOLENCE: A CRITICAL FACTOR IN CHILD CUSTODY AND VISITATION DETERMINATIONS

By Elizabeth Opell,
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For many years, as we focused on the question of "Why doesn't she leave?," children were the ignored victims of domestic violence. It was assumed that helping victims of domestic violence to "flee" the abuser involved only providing a safe place to stay while the abuser "calmed down." In most cases, it was believed that, where the victim and the abuser were married, divorce would end the cycle of abuse.

Focusing only on physical separation of the parties and an end to marital ties does not, however, recognize the fact that children are present in 80% of the homes where violence is a constant threat.[1] Divorce does not void the fact that the parties share a child and that the victim will, in the majority of cases, continue to have contact with the abuser. In the majority of cases, the attention of the abuser shifts from the abused parent to the child. The abuser begins to use the child as an instrument of continued abuse by manipulating custody and visitation arrangements in an effort to harass the other parent, causing the child to become a new victim. Researchers have discovered that abuse of the parent almost always precedes abuse of the child.[2] Consequently, it is imperative that an effective response to domestic violence involve a statutory framework for considering domestic violence as a factor in awarding custody and a compassionate, informed judicial interpretation of those laws.

Kentucky custody and visitation statutes direct a court to consider domestic violence as a factor in determining what is in the best interests of the children. K.R.S. § 403.720(2)(f). Also, K.R.S. § 403.320(2) directs that, when domestic violence is alleged, a court should craft a specific visitation arrangement, if any, that does not endanger the child or the custodial parent. Under the current statutory scheme, an allegation of domestic violence triggers the protective powers of the court for both the child and the custodial parent. The Kentucky General Assembly is aware of the fact that familial abuse does not always end with divorce of the parents.

As part of the "no-fault" divorce model, courts were previously restrained from considering evidence of domestic violence where the abused parent could not demonstrate that the violence had affected the relationship to the child. Domestic violence was lumped with other types of misconduct, such as adultery and substance abuse. Misconduct of a parent was irrelevant to the custody determination without a showing of effect on the children's relationships with their parents. Despite the overwhelming statistical evidence that domestic violence affects children in the home, victims of domestic violence and their advocates often faced the daunting prospect of proving the effect on the parental relationship. Demonstrating that domestic violence affected the parental relationship proved to be especially difficult when the victim of domestic violence was without the financial resources to engage the children in counseling and provide expert testimony of the effects of the violence on children. Where domestic violence is involved, however, the court now has an affirmative duty to determine the extent to which it has affected the child *and* the parental relationship. Arguably, the legislature presumes that domestic violence inevitably has a negative effect on children's relationships with their parents. The question of what level of proof the courts will require prior to making custody arrangements on the basis of domestic violence has yet to be answered.

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[1] Bureau of Justice Statistics, 1993.

[2] Bowker, Lee H., Ending the Violence: A Guidebook Based on the Experience of 1,000 Battered Wives, Learning Publications: 1986.

Another important consideration in divorce actions where domestic violence is alleged is the crafting of custody and visitation arrangements where a Domestic Violence Order (DVO) restraining at least one parent from contact or communication with the other parent exists. Most contain a provision restraining the abusive party from contact or communication with the victim. Problems arise when the court in a later or simultaneous divorce action will order joint custody or visitation without third-party involvement. Joint custody requires continuing dialogue between the parties because joint custody envisions a situation where the child "would continue to be reared by both parents and have the benefit of decision-making with respect to important matters."[1] Nevertheless, the courts often fail to amend the (DVO) to clarify the level of communication allowed between the parties for purposes of facilitating custody and visitation. As a result, the parents are placed in a position of attempting joint decision-making where they are not allowed to speak.

Clearly, an argument exists that joint custody is inappropriate in any situation where domestic violence is a factor due to the unequal positions of the parents. Where one parent has lived and continues to live with the threat of violence affecting the life decisions, it is unrealistic to assume that a divorce can later equalize those positions and allow them to participate responsibly and rationally in decisions regarding the upbringing of their children.

Even where courts include an exception on the(DVO) that the parties may have contact as ordered in the divorce action, the problem is not solved because the parties are still unsure about the level of allowable communication. Furthermore, that level of communication can prove to be a weapon of harassment by the abusive party. Consider, the problems of proof involved with any alleged violation of the (DVO). Under a (DVO) with no exceptions for contact or communication, the simple act of contacting the protected party is a violation of court order. Proof of the violation can be made through phone records and no testimony about the subject of the conversation is necessary. With the exception for contact or communication involving the children, the court is placed in the position of sorting through "he said, she said" stories.

The only solution is to provide specific visitation guidelines accompanied by specific instructions about communication, preferably through a third party adult. Lawyers and judges share a responsibility to identify situations where continued contact between the parties can be not only a source of harassment, but a safety concern as well. Each set of parents involved in a custody dispute is entitled to an individualized determination of custody.[2] A review of the facts of those cases must include a review of safety issues where domestic violence is a factor.

Family courts provide the best opportunity for the judiciary to craft custody and visitation arrangements protecting the safety of domestic violence victims. The legislature attempted to create an arrangement where one judge heard all evidence about a couple's violent relationship by giving the circuit court jurisdiction to review a domestic violence petition when a divorce or custody action was pending. K.R.S. § 403.725(4). Oftentimes, however, filing for a protective order is the first step for a victim separating from the abuser. A divorce or custody action may not be initiated for several months, usually due to financial constraints. Consequently, the judge or domestic relations commissioner ruling on the issues of custody or visitation has not heard all the evidence regarding domestic violence. In comparison, family court systems allow for the creation of a single court record on the couple to follow them until the completion of all domestic issues. The judge has a complete record of the relationship of the parties. Consequently, the judge is in a better position to understand and rule on issues of safety and harassment related to matters of custody and visitation.

Moreover, the orders entered by the court must be specific and provide clear instruction to the parties as to allowable communication, especially where the one party has been previously restrained from contact or communication. When confronted with a domestic violence case, judges must avoid the question of "Why doesn't she leave?" and focus on why the abuser inflicts pain and what it will take to help the victim leave.

[1] Squires v. Squires, Ky., 854 S.W.2d 765, 767 (1993).

[2] Id. at 770.

Calendar of Events

July 1	**Floyd Family Court Start Up**
Sept. 1	**Christian, Clark/Madison, Franklin, Lincoln/Rockcastle/Pulaski, McCracken Family Court Start Up**
Sept. 13-15	**Child Abuse Prevention Conference (606) 225-8879 Executive West Hotel, Louisville, KY.**
Oct. 6,7,8	**Family Court Orientation Conference**
Oct. 24-29	**Advanced Family Law Training**
Jan. 2000	**Circuit Judges' College**

Please forward suggestions for future articles by September 15, 1999

Volunteer Opportunities

Take a Walk on the Child Side!

The Court Appointed Special Advocate (CASA) Project of Jefferson County is recruiting volunteers to advocate for abused and neglected children involved in the family court system. Volunteers, who are appointed by the Court and of at least 21 years of age, work with others involved with the case toward the child's placement in a permanent home. The basis of the CASA concept is that every child has a right to a safe, permanent home. Volunteers spend one to four hours per week on one case at a time. For more information, please call the CASA office at (502) 595-4911 or e-mail us at casajc@aol.com.